IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 6048 of 2004

Amol Narayan Wakkar and anr.. petitioners

vs

State of Mah and ors....respondents

with

Writ Petition No.6627 of 2004

Dattaram Madhukar Thakar... Petitioner

vs

State of Mah and ors..respondents

with

Writ Petition No.6587 of 2004

Kum Hira Sadanand Maske and ors..Petitioners

vs

State of Mah and ors.. respondents

with

Writ Petition No.6782 of 2004

Mangesh G Maskar and ors. Petitioners

vs

State of Mah and ors..respondents

with

Writ Petition No.6786 of 2004

Mrs Savita Vitthal Thakur and ors..petitioners

vs

State of Mah and ors.. respondents

Mr. Shekhar Naphade with Mr R.K.Mendadkar
for petitioners.
Mr.V.A.Gangal Special Counsel with Mr.
P.M.Patil AGP for respondents l to 3 and 6 to 8
Mr. G.S.Hegde for respondent no. 8A

with

Writ Petition No 7020 of 2004

Ashok Vishnu Atak ... Petitioner

vs

State of Mah and ors...respondents

with

Writ Petition No.7056 of 2004

Arun Babli Ranshing ....Petitioners

vs

State of Maharashtra and ors..respondents

with

Writ Petition No.7052 of 2004

Mohan Babli Ranshing .. Petitioner

vs

State of Maharashtra and ors.respondents

Mr. V.B Naik for petitioners
Mr. V A Gangal Special Counsel with
Mr. P.M.Patil AGP for respondent nos.l to 3

CORAM:A.P.SHAH & S.U.KAMDAR JJ.

Dt l4.9.2004

Per A.P.Shah J.

l. These petitions under Article 226 challenge a common order passed by the Scheduled Tribe Scheduled Caste Certificate Scrutiny Committee,Konkan Division, Thane dated llth June 2004 invalidating the caste certificates of almost 200 persons including the petitioners which certificates certified them as belonging to the "Thakar" Scheduled Tribe falling under Entry 44 of Scheduled Caste, Scheduled Tribes Order (Amendment) Act, l976. The 200 persons were seeking caste validity certificates for diverse purposes, including admission to professional courses, seeking employment or promotion in government and semi-government bodies and corporations etc. There is no dispute that all of the applicants belong to the "Thakar" community.This is borne out by the very first sentence of the impugned order, which states that the applicants are all Thakars from Sindhudurg (erstwhile Ratnagiri) district.The Scrutiny

Committee however,relying upon certain passages from R.E.Ethoven's "Tribes and Castes of Bombay Presidency" and extracts from the Bombay Gazetteer, held that the traits of the Thakar community from the erstwhile Ratnagiri district, are indicative of nomadic culture, and dependence on village society. The Committee , therefore opined that the Thakars of Ratnagiri district do not belong to the Thakar Scheduled Tribe as described in Entry 44 of the Presidential Order and they are correctly classified as Nomadic Tribe at serial no.22 of the Government Resolution in Education and Social Welfare Department No CBC -l36l/M dated 2lst November l96l. The Committee observed that some of the applicants had earlier obtained caste certificates of Nomadic Tribe, and therefore the act of these applicants of applying to the Scrutiny Committee was itself illegal. According to the Scrutiny Committee, when certificates of Nomadic Tribe were granted earlier to Scheduled Tribe certificates the status of the applicants,by their own admission, is of Nomadic Tribe only and it cannot be changed to any other caste or community. As regards the decision of the Constitution Bench of the Supreme Court in State of Maharashtra vs Milind, 200l (l) SCC 4

and the decision of this court in Pandurang Rangnath vs State of Mah., l998 (2) Mah L J 806 relied upon by the petitioners, the Committee observed:

> .." in spite of the above judgments in some individual cases Scrutiny Committees are rejecting claims of Thakar/Thakur by applying affinity test or on some other grounds.Many of such decisions are maintained by the High Court and by the Supreme Court. One recent decision is of Supreme Court in Santosh Thakur vs State of Maharashtra and anr (SLP no.926 of l999) dated 22.l.2004. Thus, it remains the prerogative of the Scrutiny Committee to adjudicate the social status claims".

The Committee, therefore, concluded that none of the applicants belong to the Thakar Scheduled Tribe and invalidated the claims of the applicants and directed to cancel and confiscate their caste certificates.

2. Before examining the legality of the impugned order of the Committee, it would be useful to refer to the legal position in the light of the constitutional provisions and the decisions of

the Supreme Court and of this court on the subject. Articles 34l and 342 of the Constitution deal with the Scheduled Castes and Scheduled Tribes respectively and contain almost identical provisions. We may extract Article 342 dealing with Scheduled Tribes:

> "342. Scheduled tribes- (l) The President may with respect to any State or Union Territory,and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory,as the case may be.
>
> (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (l) any tribe or tribal community or part of or group within any tribe or tribal community but save as aforesaid a notification issued under the said clause

shall not be varied by any subsequent notification".

3. Clause (l) of Article 342 provides that the President may with respect to any State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State. The object of this provision obviously is to avoid all disputes as to whether a particular tribe is a Scheduled Tribe or not and only those tribes can be Scheduled Tribes which are notified in the order made by the President under Article 342 after consultation with the Governor where it relates to such tribes in a State. Clause (2) then provides that Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (l) any tribe or tribal community or part of or group within any tribe or tribal community. The power is thus given to the Parliament to modify a notification made by the President under Clause (l). Further Clause (2) goes on to provide that notification issued under Clause (l) shall not be

varied by any subsequent notification, thus making the modification final for all times except for notification by law as provided by Clause (2). Clearly, therefore, Article 342 provides for a notification and for its finality except when altered by Parliament by law. The argument on behalf of the petitioners is based on the provisions of Article 342 and it is urged that notification once made is final and cannot even be revised by the President and can only be modified by inclusion or exclusion by law by Parliament. Therefore, in view of this stringent provision of the Constitution with respect to a notification issued under Clause (l) it is not open for anyone to exclude any tribe mentioned in the notification on the basis of evidence - oral or documentary - if the tribe in question finds specific mention in the notification. It is, therefore, urged that the State Government has acted illegally by classifying Thakars of erstwhile Ratnagiri district as Nomadic Tribe vide Government Resolution dated 2lst November, l96l. According to the petitioners in view of the clear provision contained in Article 342 all the members of the Thakar community throughout the State must be treated as belonging to Scheduled Tribe. The Government Resolution

treating the Thakars of erstwhile Ratnagiri district as Nomadic Tribe is, therefore, unconstitutional. It is submitted that Entry 44 should be read as it is and benefit should be given to all the members of the Thakar community. In any event, it is pointed out that Government Resolution dated 2lst November, l96l has been withdrawn by the State vide Notification dated 2nd June 2004.

4. In order to appreciate the submissions of the petitioners it would be necessary to refer to the relevant notifications issued under Article 342 of the Constitution. The President initially made the Constitution (Scheduled Tribes) Order, l950, on 6th September, l950 in exercise of the powers conferred by Clause (l) of Article 342 of the Constitution of India. As far as the then State of Bombay was concerned, the relevant portion is to be found in Part II of the Schedule to the said l950 Order. Entry 2l deals with 'Thakur'. Clause 2 of the said Order says that the tribes or tribal communities,or parts of, or groups within tribes or tribal communities specified in Parts I to XIV of the Schedule to the Order shall, in relation to the States to which those Parts respectively relate,be deemed

to be Scheduled Tribes so far as regards members thereof residing in the localities specified in relation to them respectively in those Parts of that Schedule. Thus, so far as the erstwhile Bombay State was concerned, ‘Thakur’ was declared to be Scheduled Tribe.

5. On 25th September l956, the Parliament enacted the Scheduled Caste and Scheduled Tribe Order (Amendment) Act, l956, amending the Constitution (Scheduled Tribes) Order, l950 referred to above. Scheudle III of the l950 Order dealing with Bombay State was amended by Act No.63 of l956. Schedule III to Act No.63 of l956 deals with amendments to the Constitution (Scheduled Tribes) Order, l950. Part IV Bombay, Item 6 reads as follows:

"6.(a) In Ahmednagar district; Akola, Rahuri,and Sangamner talukas.		
(b) In Kolaba district:- Karjat Khalapur, and Sudhagad talukas and Matheran.	Pen,Panvel	Thakur or Thakar including Ka Thakur,

Ka Thakar,
Ma Thakur
& Ma Thakar

(c) In Nasik district:-
Igatpuri, Nasik & Sinnar
talukas

(d) In Poona district:-
Ambegaon, Junnar, Khed
and Mawal talukas

(e) In Thana district:-
Thana, Kalyan, Murbad
Bhiwandi Bassein, Wada,
Sahapur,Palghar Jawhar
and Mokhada talukas ".

Thus in Act No.63 of l956 the area restriction was adhered to and only Thakur or Thakar, including Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar belonging to the aforesaid areas were declared to be a Scheduled Tribe. The petitioners admittedly belong to Sindhudurg i.e. erstwhile Ratnagiri District, and therefore, were not covered by the l956 Amendment.

6. The Department of Social Scrutiny of India

appointed an Advisory Committee to examine the question of revision of lists of Scheduled Castes and Scheduled Tribes and make a report thereon.The Committee made its report.The Committee took note of the fact that in the lists of many States, including Maharashtra, Scheduled Castes and Scheduled Tribes have been specified with reference to certain localities (usually District and Tehsils) within the State.The result was that no person could legally be regarded as a member of a Scheduled Caste or a Scheduled Tribe for the purpose of the Constitution unless he belongs to the listed caste or tribe and also resident in the specified localities within the aforesaid States. This had led to anomalous results. Members of the same caste or tribe from ethnological or social point of view were deprived of the special privileges and benefits merely because they resided in different States or different parts of the same State. It was observed that this anomaly had its origin in the lists prepared under the Government of India Act,l935. The territorial restrictions were, then,probably introduced either because the social disabilities attached to certain castes and tribes were appreciably more distinctive in particular localities or because certain castes

and tribes were found to be concentrated in appreciable numbers only in the specified localities. Such area restrictions had been criticised both within and outside the Parliament. It operated as a clog on social mobility as the communities concerned would confine themselves to the specified areas, lest, they lose the special privileges and benefits by moving out of the specified area.It was rightly pointed out that consistent with the policy of social integration , the tribes, in particular, should be encouraged to abandon their isolation, and freely intermix with the rest of the population. Another argument which weighed with the Committee was that as a result of the spread of education, many boys and girls of the Scheduled Castes and Scheduled Tribes,who had attained secondary or university level education,had, in the absence of adequate educational facilities near their homes,migrated to regional cities or State headquarters or even outside the State to prosecute higher studies in higher institutions of their choice. The Committee, therefore, recorded its happiness that every State and Union Territory in India had, in appreciation of these considerations, agreed to remove the area restrictions generally. On the

basis of this report, the Parliament enacted Act No.l08 of l976 on l8th September,l976 viz the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, l976, Section 4 of the said Act of l976 deals with the amendment to the Scheduled Tribes Orders. The Scheduled Tribes Orders were amended in the manner and to the extent specified in the second Schedule to Act No l08 of l976. In the Second Schedule, Part IX deals with Maharashtra State. Entry 44 in the said Part IX reads as under:-

> "44. Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar".

There is,thus,no doubt whatsoever that by virtue of the said parliamentary enactment a person who is either a Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur , Ma Thakar has been declared to belong to a Scheduled Tribe within the meaning of Article 342 of the Constitution.

7. At this juncture it is necessary to refer to the decisions of the Supreme Court laying down para meters of the inquiry to be conducted in this regard by the court. The Constitution Bench in the case of B Basavalingappa vs D

Munichinnappa, AIR l965 S?C l269 examined the provisions of Article 34l which contained similar provisions for the scheduled casts with reference to an election dispute and held as follows:

> "It may be accepted that it is not open to make any modification in the order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore, must be deemed to be included in caste A. It may also be accepted that whenever one caste has another name it has been mentioned in brackets after it in the Order.. Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B is part of caste A notified in the Order".

8. The decision in B Basavalingappa's case was followed in another Constitution Bench judgment in Bhaiyalal vs Harikishan Singh, AIR l965 SC l557, and in Parasram vs Shivchand (l969) l SCC 20 and Kishorilal Hans vs Raja Ram Singh, (l972) 3 SCC l. In two cases i.e. Dina vs Narayan Singh, 38 ELR 2l2 and Bhaiya Ram Munda vs Anirudh

Patar, (l970) 2 SCC 825, the Division Bench however, took contrary view that evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be while stating that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. The decisions in Dina and Bhaiya Ram were overruled by the Supreme Court in Constitution Bench decision in State of Maharashtra vs Milind (supra) In Milind's case the Constitution Bench reaffirmed the legal position that was enunciated in B Basavalingappa and Bhaiyalal and observed in para l5:

> "The courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 34l and 342 particularly so when in clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament. The

power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said orders are to be amended,it is the Parliament that is in a better position to know; having means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage or reservations for the purpose of Article l5(4) or l6(4) several persons have been coming forward claiming to be

> covered by Presidential Orders issued under Articles 34l and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 34l and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not expressly included".

The Court further observed in para 26 as under:

> "Being in respectful agreement,we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in , to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is within the scope and meaning of the concerned Entry in the Presidential Order when it is not so expressly or specifically included. Hence we answer the question no. l in negative".

9 In Milind's case the court held that circulars/ resolutions/ instructions issued by the State Government from time to time, some time contrary to the instructions issued by the Central Government, are of no consequence. They could be simply ignored as the State Government had neither authority nor competency to amend or alter the Scheduled Tribes Order. The Court summarised the legal position in para l4 as under:

> "In the light of what is stated above,

the following propositions emerges- l. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, l950. 2. The Scheduled Tribes Order must be read as it is, it is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3.A notification issued under clause(l) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (l) of Article 342 only by the Parliament by law and by

no other authority.

4. It is not open to State Governments or Courts or tribunals or any other authority to modify,amend or alter the list of Scheduled Tribes specified in the notification issued under Clause(l) of Article 342.

4. Decisions of the Division Benches of this court in Bhaiya Ram Munda vs Anirudh Patar and ors, l97l (l) SCR 804 and Dina vs Narayan Singh 38 ELR 2l2, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (l) above no enquiry at all is permissible and no evidence can be let in, in the matter".

l0. We may also refer to the decision of a three Judge Bench in Palghat Jilla Thandan Samudhaya Samrakshna Samiti and anr vs. State of Kerala and anr, (l994) l SCC 359. The issue in that

case was similar to the issue in this case. In that case the question was relating to the implementation of Scheduled Castes Order issued under Article 34l of the Constitution. The question was whether it was open to the State Government to deny the members of Thandan community residing in Malabar district and present Palghat district benefits due to Scheduled Caste included in the Schedule to the Constitution Scheduled Castes Order. The Supreme Court in paras l5, 28 and 36(l) of the report held thus:

> 15. Thus it is clear that States have no power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders,

defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub caste; a group or part of tribe or sub tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said article, it is expressly stated that the said order cannot be amended or varied except by law made by Parliament. The power to include or exclude amend or alter Presidential Order is expressly and conclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it

is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not specifically included, may lead to problems, in order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders. Neither the State Government nor the courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or tribe is included in Presidential Orders in one entry or the other although they are not

expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

28. Being an respectful agreement we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included. Hence, we answer Question 1 in the negative.

> 36(1) It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribes or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950."

The Court held that Thandan community having been listed in the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Art 34l,is valid. Consequently a direction was issued to the State Government to grant to all the members of the Thandon community including those belonging to the erstwhile Malabar district and the present Palghat district, the benefits due to Scheduled Caste included in the Schedule to the Constitution Scheduled Castes Order as amended upto date and to issue to them community certificates

accordingly. The decision in Palghat Thandan's was cited with approval by the Constitution Bench in State of Maharashtra vs. Milind. ll. In our opinion what has been stated about Scheduled Castes Order issued under Article 34l of the Constitution must apply to the Scheduled Tribes Order issued under Art 342 of the Constitution. A plain reading of Entry 44 would show that Thakar community is included in Scheduled Tribes and it is not permissible for the State Government or the courts to deny the benefits available to the Scheduled Tribe community to the members belonging to the Thakar community in erstwhile Ratnagiri District. In the light of the clear dictum of the Supreme Court in Palghat Thandan's case the State Government has no jurisdiction to issue the Government Resolution of 2lst November l96l. As pointed out earlier the said Resolution dated 2lst November l96l has been withdrawn by the State Government vide Government Resolution dated 2nd June 2004 annexed at page 249 to the compilation. The decision seems to have been taken pursuant to the recommendation made by the Joshi Committee. In any event, even if it is assumed that there is a separate community which is also called as Thakar in erstwhile Ratnagiri

district which is distinct from Thakar community which is notified as Scheduled Tribe in Entry 44 of the Scheduled Tribe Order the State Government is not entitled to issue order or resolutions contrary thereto. Since under Entry 44 Thakars are specifically notified in the list of Scheduled Tribes in relation to the State of Maharashtra, Thakars throughout the State must be deemed to be Scheduled Tribe by reason of provisions of the Scheduled Tribes Order. l2. At this state we may also refer to the Government Resolutions issued by the State Government from time to time. First in point of time is Government Resolution dated 2lst November l96l whereby the State Government recognised Thakar community from erstwhile Ratnagiri district as Nomadic Tribe. However, thereafter by Government Resolution dated l3th October l967 issued by the State Government the caste of Thakar through out the State of Maharashtra was included in the list of Other Backward Class at Srl no.l56. After the removal of area restrictions with effect from 27.7.l977 the State of Maharashtra issued another Government Resolution dated 9th December l977 whereby the Thakar caste alongwith certain other castes in the State of Maharashtra was deleted from the

list of OBC. presumably due to the fact that the Thakar community was included in the list of Scheduled Tribe. Our attention was drawn to the clarificatory letter addressed by the Social Welfare Department of State of Maharashtra to one Shri V. Gangavane, President of Gokul Prakalp Prathistan clarifying that "-- the tribe Thakar is included in the Scheduled Tribe in State of Maharashtra and as such the Thakars from Ratnagiri district are to be treated as Scheduled Tribe". However again the State of Maharashtra issued Government Resolution dated 8th July l982 recognising Thakar caste as OBC. By another Government Resolution dated 24th April l985 the State Government issued certain guidelines to the competent authorities empowering them to issue certificates to the Scheduled Tribes.

l3 In Pandurang Rangnath vs State of Mah.(supra) the Division Bench of this court following the decision in Palghat Jilla Thandan’s case quashed and set aside the Government Resolution dated 8th July l982 declaring Thakar community as Other Backward Class (OBC).The Court observed:

> "In our view, therefore in the light of the clear dictum of the Apex Court in

Palghat Jilla Thandan's case the State Government has no jurisdiction to issue the impugned G. R dated 8th July l982 declaring that Thakar should be added as an OBC at entry 200 in GR dated l3.l0.l967.

Similar view has been taken by the Apex Court in later decision to which our attention has been invited by Shri Ketkar. In Pankaj Kumar Shah vs Sub Divisional Officer, Islampur (l996) 8 SCC 264, question arose whether the court has power to include in or exclude from or substitute or declare synonyms to be Scheduled Caste or Scheduled Tribe.In para 6 of the judgment at page 266 of the report the Apex Court observed as under:

"6. It is now settled law that though evidence may be admissible to the limited extent of finding out whether a caste which claims the status as Scheduled Caste or Tribe was in fact included in the Presidential notification as amended under the l976 Act,the court is devoid of power to include in or exclude from or

substitute or declare synonyms to be a Scheduled Caste or Scheduled Tribe. The court would only look into the notification issued by the President to see whether the name finds place in the notification? Saha caste is expressly excluded from Sunri, a Scheduled Caste notified in the notification issued by the President in relation to the State of West Bengal which is conclusive. The certificate issued to petitioner is, therefore, clearly unconstitutional and a fraud on the Constitution. The petitioner cannot be considered to be a Scheduled Caste.

l4. In view of the constitutional provisions and the parliamentary enactment, it is difficult to appreciate how the State Government can by an ordinary resolution dated 8th July l982 declare Thakar to be an OBC. In effect what the parliamentary enactment - Act No l08/76 declares to be a Scheduled Tribe for the purpose of Art 342 has been,by virtue of the GR dated 8th July l982 issued by the State Government declared

> to be an OBC. In our view, having regard to the ratio of the above mentioned two decisions of the Apex Court we have no option but to declare the GR dated 8th July l982 as clearly unconditional null and void".

l4. The Special Leave Petition filed by the State Government against the above judgment of the Division Bench being SLP (Civil) CC No.202 of l999 was dismissed by the Supreme Court on l2th July l999 and the decision of the Division Bench was confirmed.

l5. In Chandrakant Bajirao Shinde vs. State of Maharashtra, 2003(2) Mah L J 47l, the Division Bench of this court, following the decision in Palghat Jilla Thandan’s case and Milind’s case held thus:

> "Applying the aforesaid legal position, as propounded by the Apex Court, we have no hesitation in holding that Scrutiny Committee was not justified and as a matter of law had no competence to go into the question by holding enquiry that the petitioner belongs to caste Thakar of

> Bhat category. The Presidential Order has to be read as it is and applied accordingly without any tinkering whatsoever. The tribe "Thakar" throughout the State of Maharashtra has to be treated as Scheduled Tribe".

Similar is the view taken by different Benches in Narendra Dhundku Thakur vs. Scheduled Tribe Scrutiny Committee Pune , 2004(2) Mah L J 578, Mohan Babali Ransingh vs State of Maharashtra (Writ Petition No.4005 of l996 decided on 3rd April 2003), Shashikant Jagannath Chavan vs State of Maharashtra, (Writ Petition No.l689 of l994 decided on 9th July 2004) and Yeshwant Rohidas Bhosale vs Secretary Government of Maharashtra, Tribal Development Department, Bombay and ors (Writ Petition No. l3l3 of l997 decided on 29th July 2004).

l6. In view of this established legal position the observations made by the Scrutiny Committee attempting to distinguish "Thakar" of erstwhile Ratnagiri District from "Thakar Scheduled Tribe" are wholly erroneous and have to be discarded

from consideration. It is not disputed before us that the petitioners have established that they belong to Thakar community but the Committee on erroneous assumption proceeded to hold that Thakars of erstwhile Ratnagiri District are being different than Thakar Scheduled Tribe as described in Entry 44 of Scheduled Tribe Order. We are unable to appreciate the approach of the learned Members of the Committee in rejecting nearly 200 applications solely on the basis that though the applicants belong to Thakar community they fall outside Entry 44 of Scheduled Tribe Order. In view of the decisions of the Supreme Court in Milind and Palghat Thandon's cases the Committee has no competence or authority to go into the question whether petitioners belong to Thakar Nomadic Tribe as has been done in this case. Entry 44 of the Schedule to the Presidential Order notifies Thakars without any area restrictions being Scheduled Tribe within the entire State of Maharashtra. The Scrutiny Committee was thus not justified in proceeding with the inquiry on the basis of alleged socio cultural traits and ethnical linkage to find out whether the petitioners belong to Thakar Scheduled Tribe when admittedly the petitioners belong to Thakar community. The Scrutiny

Committee has also failed to see that some of the applicants were earlier issued caste certificatres as belonging to Thakar Nomadic Tribe only due to the stand of the State Government which kept on changing and the notifications which were issued by the State Government from time to time contrary to the constitutional mandate. It appears that initially caste certificates were isdsued on the basis that the applicants belong to Scheduled Tribe and from l985 to 200l again they were considered as Nomadic Tribe. It appears that thereafter the applicants have been again granted caste certificates as belonging to Scheduled Tribe which was in consonance with the constitutional mandate. Therefore, the Scrutiny Committee was not right in holding that the applicants were trying to change their status. The Scheduled Tribe Order has to be read as it is and applied accordingly without any tinkering whatsoever Therefore the tribe "Thakar" throughout the State has to be treated as Scheduled Tribe.

l7. We are also constrained to observe that it was highly improper on the part of the Committee to dispose of nearly 200 cases by a common

cryptic order. The impugned order does not give any reasons for discarding the documents submitted by the petitioners .There is no analysis of documents produced on record. The order does not discuss merits of the case of any of the applicants and is virtually a non speaking order. There is no discussion at all in the entire order why the evidence adduced by the petitioners was not acceptable. We may also mention that there are serious complaints about the manner in which the Caste Scrutiny Committees decide the cases arbitrarily and unjustly thereby increasing the filing and pendency of the petitions under Art 226. They have been treating these matters which have very serious consequences,rather lightly and without application of judicious mind. Having regard to the fact that the role, duty and functioning of these committees is akin to the judicial work we feel that it would be desirable that atleast one member of the committee should be a trained judicial officer. We therefore suggest to the State Government to consider reconstituting the Caste/Tribe Scrutiny Committees and appoint atleast one judicial officer on these committees to be presided over by such a judicial officer. The State Government is directed to consider this

suggestion and take appropriate decision expeditiously and preferably within a period of three months.

l8. Before parting with this judgment we may briefly refer to the various decisions cited on behalf of the respondents. Our attention was drawn to the decision of a two Judge Bench of the Supreme Court in Dadaji @ Dina vs Sukhdeo Babu, AIR l980 SC 150. This case is a sequel to the decision in Dina vs Narayansingh, 38 ELR 212. In Dina vs Narayansingh the Court held that when Parliament included the Mana community under Entry 12 it would be reasonable to infer that Mana community which is a sub-tribe of the Gond or has some affinity with it, is intended to be referred. The form in which the entry is made prima facie indicates that in the view of the legislature, Mana was a sub-tribe of Gond and a Mana who was a member of the sub-tribe of Gond alone was entitled to the privileges conferred by the Schedule to the Constitution (Scheduled Tribes) Order. In that view of the matter the Court confirmed the finding of the High Court that appellant therein merely because he belonged to the Mana community amongst the Marathas is not eligible to stand as a candidate for election to

the Maharashtra Assembly from reserved seat for Scheduled Tribe. This decision was expressly overruled by the Constitution Bench in Milind vs. State of Maharashtra. In second Dina case i.e. Dadaji @ Dina vs Sukhdeo Babu the effect of omission of the word "including" from Entry 12 came up for consideration before the Supreme Court. The Appellant before the Supreme Court was Dina whose election was set aside in the earlier case i.e. Dina vs Narayansingh. The only argument that was advanced before the Supreme Court was that by reason of amendment made in the year l976 persons belonging to Mana community to which the appellant belong, and which was not Scheduled Tribe, before such amendment, can be considered as persons belonging to Scheduled Tribe after such amendment. Their Lordships while rejecting this argument held that Mana community included in Entry l8 can only be that which has affinity with Gonds and any other community which also bears the name Mana but does not have any such affinity cannot be deemed to fall within the scope of Mana in Entry l8. In Milind’s case the Supreme Court laid down that first Dina’s case was not decided correctly to the extent it held that inquiry was permissible and evidence was admissible for the purpose of

showing what an entry in the Presidential Order was intended to be. In fact the Court has clearly observed that no inquiry at all is permissible and no evidence can be let in, in the matter. Therefore in our view the Supreme Court decision in 2nd Dina's case i.e. Dadaji @ Dina vs Sukhdeo Babu which considered the effect of omission of the word "including" also cannot be taken to be a good law after the decision of the Constitution Bench in State of Maharashtra vs. Milind, though the said decision is not expressly overruled.

l9. The reliance was next placed on the decisions of the Supreme Court in the case of Ganesh Gulabrao Suroshe vs State of Maharashtra (Civil Appeal No.2537 of l997 dated l7.3.l997) and Santosh D Thakur vs State of Maharashtra (Civil Appeal No.926 of l999 dt 22.l.2004). In the first case of Ganesh Gulab Suroshe the Scrutiny Committee came to the conclusion that the appellant was a "Thakur" which was a forward caste and though this was an admitted position appellant claimed to be a member of the Scheduled Tribe. It was also contended before the Supreme Court that the conclusion reached on the basis of the finding of the Committee was not warranted

and the High Court should have gone into the question and verified the basis on which the Scrutiny Committee had scrutinized the claim of the appellant as "Ma Thakur or Ka Thakur". Negativing this contention the Supreme Court held in para 5 of the judgment that there was a catena of decisions of the Supreme court holding that the Court cannot examine, to find out the caste of the party, the basis of the certificate issued. The limited area the Court can survey is whether the caste mentioned in the Presidential Notification would be applicable to the claimant or not. It was observed that the Notification issued by the President under Article 342 of the Constitution, subject to Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, l976 was conclusive and final. Indeed in our view these observations support petitioners' contention rather than the respondents. The ratio of the decision in Ganesh Gulab Suroshe's case does not support the respondents' contention. In the second case of Santosh Thakur the appellant went before the Scrutiny Committee claiming status that he belonged to Scheduled Tribe coming under the Entry 'Thakur'. Records produced by him before the Caste Scrutiny Committee reflected that he belonged to 'Hindu Thakur'. The Caste

Scrutiny Committee, after hearing the appellant and on consideration of the material that was placed before it, by a reasoned order, rejected the claim of the appellant. Writ Petition filed by the appellant was dismissed by the High court. It was argued before the Supreme Court that the appellant belongs to Thakur community and the word "Hindu" was only by of description added merely because his documents show that he belongs to "Hindu Thakur", the appellant should not have been denied the status of his belonging to Scheduled Tribe. The Supreme Court held that that the finding of fact recorded by the Scrutiny Committee was based on the evidence and dismissed the appeal. In our view this decision has no bearing on the controversy involved in these petitions. Reliance was also placed on certain orders passed by the Division Benches of this court confirming the orders of the Scrutiny Committee. These orders are basically orders of summary dismissal of writ petitions filed against the orders of the Scrutiny Committee. We do not find anything in these orders which is contrary to the legal position which has been enunciated earlier.

20. In the circumstances, it is not possible to

sustain the order of the Scrutiny Committee. We accordingly quash and set aside the impugned order dated llth June 2004 and remand the matters back to the Scrutiny Committee to decide each case separately in the light of the aforesaid legal position and observations made by us . In the circumstances, there shall be no order as to costs. Certified copy expedited.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 6048 of 2004 & ors

Date of Judgment: 14th September, 2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.U.KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?
2. Whether to be referred to the Reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judges?
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?